

**GRANT AGREEMENT BETWEEN THE
CITY OF COLLEGE STATION
AND
CROSS STREET 1, L.P.**

This Agreement is entered into by and between the CITY OF COLLEGE STATION, TEXAS, a home-rule municipal corporation organized under the laws of Texas (hereinafter referred to as "CITY") and Radakor, LLC, as general partner of CROSS STREET 1, L.P., a Texas Limited Partnership (hereinafter referred to as "DEVELOPER").

WHEREAS, CITY is authorized and empowered under applicable Texas law to aid in the development of commercial enterprises and redevelopment projects within the geographic boundaries of the CITY by offering economic and other incentives to prospective new, developing, and expanding businesses; and

WHEREAS, CITY actively seeks economic development prospects in College Station through its establishment of an Economic Development Office in College Station and participation in and establishment of other nonprofit economic development corporations; and

WHEREAS, CITY has targeted Northgate as a redevelopment district; and

WHEREAS, CITY has determined that certain conditions including aging infrastructure, dilapidated structures, and the difficulty in assembling property exist in Northgate that increase development costs and create barriers to redevelopment; and

WHEREAS, DEVELOPER is redeveloping property located within the Northgate District of College Station for use as a multi-family and mixed-use site; and

WHEREAS, DEVELOPER has expressed its intent and desire to locate at a site in Northgate; and

WHEREAS, CITY provides cash incentives for use in attracting redevelopment projects within the CITY that are qualified economic development prospects; and

WHEREAS, CITY considers DEVELOPER to be a qualified economic development prospect that will redevelop property, add capital investment, generate sales tax, and meet the goals of the Northgate Redevelopment Plan.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and promises hereinafter set forth, the Parties represent and agree as follows:

1. Definitions

For the purposes of this Agreement, when not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined in this Agreement shall be given their common and ordinary meaning.

1.1. **Certificate of Acceptance:** A certificate issued by the City Engineer stating that the construction conforms to the plans and specifications and the standards contained in or referred to in CHAPTER 9 OF THE CITY OF COLLEGE STATION CODE OF ORDINANCES.

1.2 **Certificate of Occupancy:** As defined in SECTION 110 OF THE INTERNATIONAL BUILDING CODE, 2000 EDITION AS ADOPTED AND AMENDED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION.

1.3 **Economic Incentives:** Consist of the following:

1.3.1 **Cash Incentives:**

- (a) a lump sum \$50,000.00 payment to DEVELOPER to facilitate redevelopment of the site as more fully described in Section 3.1.
- (b) payment for municipal permits and development fees up to a maximum of \$15,000.00.

1.4 **Effective Date:** The date on which this Agreement is signed by the last party whose signing makes the Agreement fully executed.

1.5 **Facility or Development:** The real property described in Section 1.6 together with the improvements described in Sections 1.7, 3.1, and elsewhere herein to be constructed on the Property owned by DEVELOPER known as "Cross Street Warehouse Apartments", a multi-family and mixed-use development. The Facility is described in the plans and specifications attached hereto as Exhibit "B" and as approved and on file with the City of College Station Planning Department. The capital investment for the premises is described in Article 3.1 hereinbelow.

1.6 **Property:** The property owned by the DEVELOPER consisting of approximately .8637 acres generally located at College Main, Tauber, and Cross Streets located in the corporate limits of College Station more fully described in the plat attached hereto as Exhibit "A", incorporated herein by reference and currently under development by DEVELOPER for use as a multi-family and mixed-use site. .

1.7 **Property Improvements:** Means all enhancements to the Property including, but not limited to, any real property improvements, infrastructure improvements, inventory,

supplies, furniture, fixtures and equipment, and assets to be located at the Property, a multi-family and mixed-use development.

2. CITY's Incentive Package, Obligations and Representations

2.1. Incentives

2.1.1 CITY agrees to fund an economic development grant to provide incentives to DEVELOPER as authorized by CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE (VERNON 1999 AND VERNON SUPP. 2003). The grant will consist of the incentives specified in Section 1.3.1a and 1.3.1b.

2.1.3 The incentives will be granted to DEVELOPER on condition that and only after the requirements established in this Section and Sections 3 and 5 hereinbelow as well as any other requirements specified in this Agreement or in any applicable City of College Station Code of Ordinances (collectively, the "Requirements") have been fulfilled by DEVELOPER:

- (a) DEVELOPER receives a Certificate of Occupancy issued by the City Engineer for the Facility and related site improvements constructed pursuant to Section 3 herein.
- (b) After receipt of a Certificate of Occupancy, that DEVELOPER opens for business to the general public at the site depicted in Exhibit "A" on or before December 31, 2005.
- (c) Receipt of a Certificate of Acceptance from City Engineer for any infrastructure constructed and dedicated to the City by DEVELOPER.

2.1.4 CITY agrees to pay to DEVELOPER the Incentives set forth in Section 1.3 within twenty (20) business days of DEVELOPER'S satisfaction of the Requirements as specified in Sections 2, 3 and 5. Prior to payment of Incentives, Developer shall provide to the CITY a notarized affidavit stating that all bills for labor, materials, and incidentals incurred have been paid in full, that any claims from manufacturers, materialmen, and subcontractors have been released, and that there are no claims pending of which the Developer has been notified.

3. DEVELOPER'S Obligations and Representations

3.1 Capital Investment

3.1.1 In order to qualify DEVELOPER for the incentives specified in Section 1.3, DEVELOPER agrees to:

- (a) locate its Facility in Northgate and within the corporate limits of the City of College Station at DEVELOPER'S commercial site described and depicted in Exhibit "A" on or before December 31, 2005.
- (b) invest \$4,000,000.00 for Property Improvements completed on or before December 31, 2005.
- (c) construct a mixed-use Facility consisting of multi-family of 40 or more units with at least 115 beds plus 2000 square feet of retail space. The retail space may be converted to multi-family or other commercial in the event that a market analysis or survey concludes that there is no demand or small demand in the market for retail rental lease space. The Facility shall be constructed substantially in accordance with Exhibit "B" the plans, specifications and site plan approved and on file with the City of College Station Development Services Department as well as all applicable laws, ordinances, regulations, and rules.
- (d) use the façade, elevation and color scheme for the Facility, which is depicted in Exhibit "C" attached hereto and incorporated herein by reference. Such elevations shall not be changed except where approved by the City's Design Review Board.
- (e) install a sidewalk on the following streets:
 - 1. College Main - 10 foot wide sidewalk
 - 2. Cross Street - 8 foot wide sidewalk
 - 3. Tauber - 8 foot wide sidewalk

The color of the concrete shall be determined by the Development Services Department at the time of site plan submittal.
- (f) install street trees, consistent with the College Station Plant List, in four-foot by four-foot (4'x4') wells spaced at a maximum of thirty feet (30') on center and located adjacent to the right-of-way. Street trees may be located in the public right-of-way pursuant to a Right-of-Way Agreement.

4. Term

The term of this Agreement is from the date of execution of this Agreement through December 31, 2006.

5. Reporting Requirements

5.1. Reports

5.1.1 DEVELOPER shall submit to the CITY any and all information or reports requested to verify that the DEVELOPER has met all obligations as specified in Sections 2 and 3. DEVELOPER shall submit to the Economic Development Director a notarized affidavit stating that all bills for labor, materials, and incidentals incurred have been paid in full, that any claims from manufacturers, materialmen, and subcontractors have been released, and that there are no claims pending of which the Developer has been notified. The submission of these reports and information shall be the responsibility of DEVELOPER and shall be signed by DEVELOPER's general partner.

5.1.2 DEVELOPER shall submit the information and/or reports required herein on or before the day that is ten days after the earlier of (i) the date of issuance of the Certificate of Occupancy and the DEVELOPER opens for business; or (ii) the date on which they are requested by the CITY. If DEVELOPER fails, within thirty (30) days after receipt of written notice from the CITY, to submit the information and/or reports, then DEVELOPER shall be ineligible to receive the economic incentives specified in Section 1.3 and CITY's obligation to grant the incentives shall terminate without any liability.

5.1.3 All submittals in this Section shall be to the Director of Economic Development or her designee.

6. Compliance with Applicable Laws

DEVELOPER will remain in compliance with all applicable laws, rules and regulations including without limitation, all applicable environmental laws, rules and regulations during the term of this Agreement.

7. Default

7.1 DEVELOPER Default

7.1.1 If DEVELOPER defaults in any material term or condition of this Agreement, then CITY shall not be obligated to approve or disburse the grant incentives specified under this Grant Agreement unless such default is cured by the defaulting party promptly but not more than 30 days after the occurrence of said default, unless such cure will reasonably take more than thirty (30) days, in which case the CITY shall approve additional time to cure the default upon submission of a plan and schedule to promptly cure the default within a reasonable time, and provided the party commences the cure within the sixty (60) day period. City Manager is authorized to extend the cure period as stated in this Section. In no event shall this Section 7 be construed to extend the time of

this Agreement beyond the term specified in this Agreement and the parties acknowledge and agree that a default shall not extend the time for performance or cure beyond the end of the term specified in Section 4.

7.1.2 A material breach by DEVELOPER consists of, but is not limited to, any of the following individual or cumulative events: failure of DEVELOPER to locate the Facility at DEVELOPER's site in Northgate within College Station; failure of DEVELOPER to meet the requirements outlined in Section 3; failure of DEVELOPER to comply with all laws, codes and ordinances relating to the construction of the infrastructure and improvements that constitute the subject matter of this Agreement; failure of DEVELOPER to meet the requirements for the receipt of a Certificate of Occupancy for the Facility on or before December 31, 2005; failure of Facility to have lease space available for lease on or before December 31, 2005; failure to obtain a Certificate of Acceptance for any infrastructure improvements; submittal of any information that DEVELOPER knows or should know is incorrect at the time of its submittal to the CITY; any material misrepresentation of fact concerning the subject matter of this Agreement.

7.1.3 CITY shall give to DEVELOPER written notice of any default of DEVELOPER. If DEVELOPER has not received grant funds, DEVELOPER shall have the right, but not the obligation, to cure the default as provided herein.

7.1.4 Except as expressly set forth in Section 8 of this Agreement, in the event DEVELOPER fails to cure any default under this Agreement within the notice and cure periods set forth in Section 7.1.1 hereof, then CITY's sole and exclusive remedy as to DEVELOPER shall be to withhold payment of the Incentives. In no event shall DEVELOPER be liable to CITY for any consequential damages as a result of any breach or default under this Agreement.

7.2 CITY Default

In the event that CITY materially breaches its obligation to disburse the economic Incentives to DEVELOPER under this Agreement, and Developer is not in default, DEVELOPER, at its option, may terminate this Agreement, and DEVELOPER may thereafter pursue its remedies available at law. In no event shall CITY be liable to DEVELOPER for any consequential damages as a result of any breach or default under this Agreement. If DEVELOPER is in default, DEVELOPER may only terminate this Agreement without further liability.

8. Indemnity

DEVELOPER agrees to and shall indemnify and hold harmless and defend CITY, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all reasonable expenses of

litigation, court costs, and reasonable attorney's fees, for injury to or death of any person, for damage to any property, or its failure to abide by all applicable environmental laws, rules and regulations arising out of or in connection with DEVELOPER's operation and construction of improvements contemplated by this Agreement on DEVELOPER's site.

9. Release

DEVELOPER releases, relinquishes and discharges the CITY, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of, any person (whether they be either of the parties hereto, their employees or other third parties) and any loss of or damage to property (whether property of either of the parties hereto, their employees, or of third parties) or their respective failure to abide by all applicable environmental laws, rules and regulations that is caused by or alleged to be caused by, arising out of, or in connection with DEVELOPER's operation of or construction of improvements contemplated by this Agreement on DEVELOPER's site.

By entering into this Agreement, the City does not consent to suit, waive its governmental immunity or the limitations as to damages contained in the Texas Tort Claims Act.

10. Assignment

This Agreement may not be assigned by DEVELOPER without the express consent of the College Station City Council.

11. Invalidity

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

12. Written Notice

All notices required by this Agreement (i) shall be in writing, (ii) shall be addressed to the parties as set forth below unless notified in writing of a change in address, and (iii) shall be deemed to have been delivered either when personally delivered or, if sent by mail, in which event it shall be sent by registered or certified mail, return receipt requested, three (3) business days after mailing. The addresses of the parties are as follows:

To DEVELOPER:	Cross Street 1, L.P.
	1710 Droxford
	Houston, TX 77008

Attn: Randy Klein, Registered Agent

Copy to: GENERAL PARTNER:
RADAKOR, L.L.C.
1710 Droxford
Houston, TX 77008
Attn: Sheila Klein, Manager

Mary Ann O'Reilly
Manager
10777 Westheimer, Suite 1125
Houston, TX 77042

To CITY: City of College Station
P.O. Box 9960
College Station, Texas 77842
Attn: City Manager

Copy to: City Attorney
1101 Texas Avenue
College Station, TX 77842

13. Entire Agreement

It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings, written or oral, between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the CITY, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

14. Amendment

No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of CITY and DEVELOPER.

15. Texas Law

This Agreement has been made under and shall be governed by the laws of the State of Texas.

16. Place of Performance

Performance and all matters related thereto shall be in Brazos County, Texas, United States of America. Venue shall lie in a court of competent jurisdiction in Brazos County, Texas.

17. Authority to Contract

Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entity.

18. Waiver

Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

19. Representation

DEVELOPER represents and warrants that no member of the College Station City Council has an interest in the Property, and that the Property is not owned or leased by any member of the College Station City Council. DEVELOPER further represents and warrants that no member of the College Station City Council is under contract either directly or indirectly with DEVELOPER or its agents, contractors or subcontractors. This representation and warranty shall be in effect for the full term of this Agreement.

21. Construction

The parties acknowledge that each party and its counsel have reviewed and revised this Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendments or exhibits hereto.

CROSS STREET 1, L.P.

By: _____

RADAKOR, L.L.C., General Partner

CITY OF COLLEGE STATION, TEXAS

By: _____

Mary Ann O'Reilly, Manager

Date:

Mary Ann O'Reilly

Ron Silvia, Mayor

Date:

Connie Hooks, City Secretary

Date:

Date:

APPROVED:

Thomas E. Brymer, City Manager

Date:

Charles Cryan, Director of Fiscal Services

Date:

Roxanne Inema
City Attorney

Date:

THE STATE OF Texas §

COUNTY OF Harris §

ACKNOWLEDGMENT

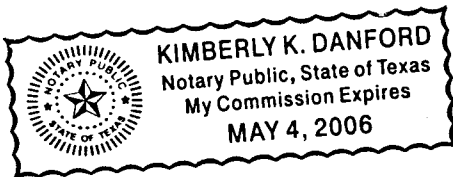
RANDALL D. KLEIN JR

Before me, the undersigned authority, on this day personally appeared _____ as
PRESIDENT of RADAKOR, L.L.C., a Texas Limited Liability Corporation, and known to me
to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me

that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 2 of December, 2003.

Kimberly K. Danford
Notary Public in and for the
State of Texas



THE STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

ACKNOWLEDGMENT

Before me, the undersigned authority, on this day personally appeared Ron Silvia, as Mayor of the CITY OF COLLEGE STATION, a Texas home rule municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the _____ of _____, 2003.

Notary Public in and for the
State of Texas